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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Erna Kastl

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ProPat

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EXAMINER

KASHNIKOW, ERIK

ART UNIT

PAPER NUMBER

1794

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/549,830	Applicant(s) KASTL, ERNA	
	Examiner ERIK KASHNIKOW	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/20/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "**said**," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 4 recites the limitation "(co)polyamide" in the second and third lines of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 7-9, 11-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Yazaki et al. (US 5,094,847).
7. In regards to claims 1 and 2 Yazaki et al. teach food packaging films with an antibacterial molded article of a polyolefin resin (column 1 lines 10-14). Yazaki et al. teach that the antimicrobial agent can be silver salts of carboxylic acid (column 3 line 9).
8. In regards to claims 7 and 8 Yazaki et al. teach that the antibacterial agent is present in concentrations of 0.05-2.0% by weight (column 4 line 25).
9. In regards to claims 9 and 14 Yazaki et al. teach that the food package can be a two layer film which then necessitates that the metal salt containing layer is an outer layer (column 6 line 31-33).
10. In regards to claims 11 and 12 Yazaki et al. teach an embodiment wherein the films are not stretched (column 5 lines 37-56) and an embodiment wherein the films undergo biaxial stretching column 8 lines 16-32).
11. In regards to claim 13 the second layer is a polyolefin (column 6 lines 28-30).
12. In regards to claim 18 Yazaki et al. teach that the film has a thickness of 15 to 20 μm (column 5 line 47 and column 6 lines 33-34).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yazaki et al. (US 5,094,847).

15. As stated above Yazaki et al. teach a film used for packaging food products but is silent regarding the film being symmetrical or asymmetrical.

16. The embodiments in claims 15 and 16 that the films would be symmetrical or asymmetrical are design choices that affect the layout of the film but not the properties, and are there for obvious to one of ordinary skill in the art at the time of the invention.

17. Claims 3-6 10, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yazaki et al. (US 5,094,847) in view of Schroder et al. (US 6,517,920).

18. While Yazaki et al. teach a multilayer film for packaging a food product, they are silent regarding copolyamide layers and tubular formations.

19. Schroder et al. teach biaxially stretched casing for wrapping food products (column 1 lines 15-18).

20. In regards to claims 3 and 4 Schroder et al. teach that at least one layer of their invention comprises the aliphatic polyamide 6/66 (column 5 lines 1-2).

21. In regards to claim 5 Schroder et al. teach that an aromatic copolyamide can also be used in that layer, specifically mentioning polyamide 6I/6T (column 5 lines 37-42).

22. In regards to claim 6 Schroder et al. that polyamide 6I/6T is added in amounts of 2-40% (column 5 line 42).

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23. In regards to claim 10 Schroder et al. teach that the casing can be tubular in shape (column 6 line 39-53).

24. In regards to claim 19 Schroder et al. teach that the tube has a diameter in the range of 10-400 mm (column 7 line 30).

25. One of ordinary skill in the art at the time of the invention would be motivated to modify the casing of Yazaki et al. with the casing of Schroder et al. because the film of Yazaki et al. which have good appearance transparency and surface properties (column 2 lines 40-43) would benefit from the good barrier properties and adhesion to the contents as offered by Schroder et al. (Column 1 lines 33-35). One would also be motivated to make the packaging of Yazaki et al tubular so that it could completely cover various foods that are tubular in shape and for which it can be used to package.

26. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yazaki et al. (US 5,094,847) in view of Schroder et al. (US 6,517,920) in further view of Towne et al. (US 4,635,316).

27. As stated above Yazaki et al. and Schroder et al. teach tubular casings used for packaging food products but are silent regarding presoaked ready to fill embodiments.

28. Towne et al. teach films used to package food products (column 1 lines 8-10).

29. Towne et al. teach that the casings can be premoisturized and be "ready to stuff" (column 3 lines 40-47).

30. One of ordinary skill in the art at the time of the invention would be motivated to modify the casings of Yazaki et al. and Schroder et al. with that of Towne et al. because the casings of Yazaki et al. and Schroder et al. which have good transperence and

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barrier properties as discussed above would benefit from the machinable properties of Towne et al., specifically eliminating the step of soaking the casing films before the food product is added, which would save time and money (column 3 lines 40-47).

31. Claims 20-22 rejected under 35 U.S.C. 103(a) as being unpatentable over Yazaki et al. (US 5,094,847) in view of Iwao et al. (JP 09-057923).

32. In regards to claims 20-21 Yazaki et al teach a method of forming the film which involves adding the metal antimicrobial salt or zeolite to the polyethylene mixture, and then extruding the mixture (column 5 lines 36-56). However Yazaki et al. are silent regarding concentrations between 5-40%.

33. Iwao et al. teach antimicrobial thermoplastic extruded film (paragraph 0001).

34. Iwao et al. teach that the antimicrobial agent can be silver inorganic compounds, and while they do not specifically mention silver salts they do mention silver zeolites (paragraph 0010) which are interchangeable with silver salts in the invention of Yazaki et al. Iwao et al. teach that the inorganic silver compounds be mixed in with the thermoplastic polymer in concentrations between 2-10% by weight (paragraph 0009 the examples).

35. One of ordinary skill in the art at the time of the invention would be motivated to modify the films of Yazaki et al. with those of Iwao et al because the film of Yazaki et al. which have good appearance transparency and surface properties (column 2 lines 40-43) would benefit from the teaching of Iwao et al. which teaches that a specific amount

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of salt such that the salt imparts antibacterial effect without weakening the film (paragraph 0009).

Conclusion

36. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other documents on the WIPO search report not used are EP 0 423 604, EP 0 405 547, JP 63 154746, JP 02 238923, JP 04 178433 DE 40 01 612 and US 4 775 585 all taught films which could be used as casings and had some sort of antibacterial property, and could have been used in place of the Yazaki reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow
Examiner
Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794